

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SARAH LITT, as an individual, and on
behalf of all others similarly situated,

Plaintiff,

vs.

WESTERN STONE & METAL CORP., a
Colorado Corporation, dba Shane Co.; and
DOES 1 through 10,

Defendants.

CASE NO. 3:14-cv-02804-PJH

**~~PROPOSED~~ ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Assigned to the Hon. Phyllis J.
Hamilton

1 On April 1, 2015, the Court heard a motion by Sarah Litt (“Plaintiff”). The
2 Court has considered Plaintiff’s motion, the Settlement Agreement, the proposed
3 Class Notice, and proposed Request for Exclusion Form, and the submissions of
4 counsel, and hereby finds and orders as follows:

5 1. The Court finds on a preliminary basis that the class action settlement
6 memorialized in the Settlement Agreement, filed with the Court, falls within the
7 range of reasonableness and, therefore, meets the requirements for preliminary
8 approval.

9 2. The Court conditionally certifies, for settlement purposes only, the
10 following settlement classes (the “Settlement Classes”):

11 All non-exempt employees of Western Stone & Metal
12 Corp., who worked in California between June 17, 2010,
13 and April 1, 2015 (the “California Settlement Class”).

14 All non-exempt employees of Western Stone & Metal
15 Corp., who worked outside of California between June
16 17, 2011, and November 8, 2014 (the “Non-California
17 Settlement Class”).

18 The Court finds that, for settlement purposes only, the requirements of
19 Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure
20 23(b)(3) are satisfied, with the exception of the manageability requirement of Rule
21 23(b)(3) which the Court need not address for purposes of settlement.

22 3. The Court appoints, for settlement purposes only, Sarah Litt, as the
23 Class Representative.

24 4. The Court appoints, for settlement purposes only, Hernaldo J.
25 Baltodano of Baltodano & Baltodano LLP and Paul K. Haines and Fletcher W.
26 Schmidt of Boren Osher & Luftman LLP as Class Counsel for settlement purposes.

27 5. The Court appoints CPT Group, Inc. as Claims Administrator.

28 6. The Court approves the First Amended Complaint attached as Exhibit

1 A to the Settlement Agreement. Plaintiff shall file the First Amended Complaint
2 within seven (7) days of the entry of this Order.

3 7. The Court approves, as to form and content, the revised Class Notice
4 attached hereto as Exhibit A, and Request for Exclusion Form, attached to the
5 Settlement Agreement as Exhibit and C. The Claims Administrator is ordered to
6 mail those documents to the Class members as provided in the Settlement
7 Agreement.

8 8. Each Class Member who does not timely submit a Request for
9 Exclusion will have sixty (60) days after the date on which the Claims
10 Administrator mails the Class Notice to object to the Settlement by either (a)
11 mailing their written objections to the Class Action Clerk, United States District
12 Court for the Northern District of California, 1301 Clay Street, Oakland, California
13 94612, (b) filing them in person at any location of the United States District Court
14 for the Northern District of California, or (c) filing them with the Claims
15 Administrator (who will then serve them on Class Counsel and Defendant's
16 counsel as well as file those objections collectively with the Court). Each Class
17 Member who does wish to be excluded from the Class will have sixty (60) days
18 from the date the Class Notice is originally mailed to opt-out of the Class.

19 9. The Court will conduct a Final Approval Hearing on July 8, 2015, at
20 9:00 a.m., or as soon thereafter as the matter may be heard, to determine the overall
21 fairness of the settlement and to fix the amount of reasonable attorneys' fees and
22 costs to Class Counsel and enhancement payment to the Class Representative. The
23 Final Approval Hearing may be continued without further notice to Class
24 Members. Class Counsel shall file their motion for approval of reasonable
25 attorneys' fees, costs, and the Class Representative payment sought in the
26 Settlement on or before June 3, 2015. Class Counsel shall file their motion for
27 final approval of the settlement on or before June 24, 2015.

28 ///

10. ~~[Proposed]~~ implementation schedule for further settlement proceedings:

Event	Date
Defendant to provide class contact information to Claims Administrator	April 8, 2015
Claims Administrator to mail Class Notice to the Settlement Classes	April 15, 2015
Class Counsel to file Motion for Attorneys' Fees and Class Representative Incentive Payment	June 3, 2015
Objection/Exclusion Deadline	June 14, 2015
Plaintiff to file Motion for Final Settlement Approval	June 24, 2015
Final Approval Hearing	July 8, 2015

IT IS SO ORDERED.

Dated: "Cr tki'4, 2237".....

The Honorable _____ Hamilton
United States District Judge

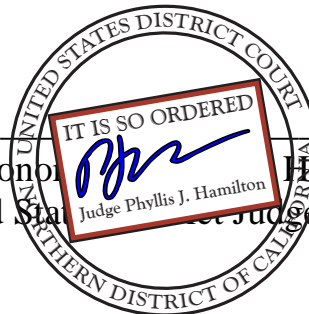


Exhibit A

Sarah Litt v. Western Stone & Metal Corp., dba Shane Co.
United States District Court, Northern District of California Case No. 3:14-cv-02804-PJH

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,
YOUR RIGHTS, AND OPTIONS FOR YOU TO CONSIDER**

IF YOU WERE EMPLOYED BY WESTERN STONE & METAL CORP., DBA SHANE CO. AS A NON-EXEMPT EMPLOYEE IN CALIFORNIA AT ANY TIME BETWEEN JUNE 17, 2010 AND APRIL 1, 2015, OR OUTSIDE OF CALIFORNIA AT ANY TIME BETWEEN JUNE 17, 2011 AND NOVEMBER 8, 2014, THEN YOU MAY RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT.

IMPORTANT: YOU WILL BE DEEMED TO HAVE ACCEPTED YOUR SHARE OF THE SETTLEMENT MONIES UNLESS YOU TIMELY RETURN A REQUEST FOR EXCLUSION OPTING OUT OF THE SETTLEMENT AS EXPLAINED BELOW.

PLEASE READ THIS NOTICE CAREFULLY.

WHAT THIS NOTICE CONTAINS

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I. What is the purpose of this Notice?

The purpose of this Notice is to let you know that there is a class action lawsuit pending in the United States District Court, Northern District of California, that you may be a member of the Class in that lawsuit AND THAT YOU MAY BE ENTITLED TO A PAYMENT AS PART OF THE SETTLEMENT OF THE LAWSUIT. The lawsuit was filed against Western Stone and Metal Corp., dba Shane Co. ("Shane Co." or "Defendant") and alleges that Shane Co. failed to pay all overtime wages owed to its non-exempt employees, and failed to provide its non-exempt employees in California with all required meal and rest periods.

The Parties to the lawsuit agreed to settle the matter on behalf of a class of approximately 1,300 employees who allegedly did not receive all overtime wages earned as a result of Shane Co. failing to properly account for bonuses and commissions in employees overtime rates of pay, as well as approximately 250 employees in California who allegedly did not receive all required meal and rest periods or were not paid all wages owed at termination. On April 1, 2015, in Courtroom 3 of the United States District Court for the Northern District of California, the Court held a hearing in which it approved Plaintiff's motion for a court order that:

- 1.) Preliminarily certifies the class action for settlement purposes only;
- 2.) Grants preliminary Court approval of the proposed settlement and preliminarily appoints Class Counsel and the Class Representative;
- 3.) Grants Court approval of this Notice, which includes setting a schedule and procedure for requesting exclusion or distributing monies from this settlement; and,
- 4.) Schedules a Final Fairness Determination Hearing for final Court approval of the settlement and a Hearing on Attorney's Fees and Costs for July 8, 2015, at 9:00 a.m. in Courtroom 3 of the United States District Court for the Northern District of California. The hearing may be continued (moved to another date) without further notice to the Settlement Classes. It is not necessary for you to appear at the Final Fairness Determination Hearing unless you have timely filed an objection with the Court.

II. Why are the Parties seeking settlement approval?

Plaintiff seeks approval of the settlement because she has reached a proposed settlement with Shane Co. that she believes to be fair, reasonable, adequate, and in the best interests of the members of the Class and all parties. Shane Co. views this settlement as a compromise, and is not admitting to the allegations in the case.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement available at [\[INSERT STATIC WEB ADDRESS\]](#), by contacting Class Counsel at their addresses listed below, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

III. Why did I get this Notice?

You received this Notice because Shane Co.'s records identify you as a member of one of the Settlement Classes. The Settlement Classes are defined as follows:

The California Settlement Class: all non-exempt employees who worked in California between June 17, 2010, and April 1, 2015.

The Non-California Settlement Class: all non-exempt employees who worked outside of California between June 17, 2011, and November 8, 2014.

If you choose to exclude yourself from this settlement, see Section VI, below, then you will not be a member of either the California Settlement Class or the Non-California Settlement Class.

IV. Who are the attorneys representing the parties?

Class Counsel

BOREN, OSHER & LUFTMAN LLP

Paul K. Haines

Email: phaines@bollaw.com

Fletcher W. Schmidt

Email: fschmidt@bollaw.com

222 N. Sepulveda Blvd., Suite 2222

El Segundo, California 90245

Tel: (310) 322-2220

Fax: (310) 322-2228

BALTODANO & BALTODANO LLP

Hernaldo J. Baltodano

Email: hjb@bbemploymentlaw.com

1411 Marsh Street, Suite 102

San Luis Obispo, California 93401

Tel: (805) 322-3412

Fax: (805) 322-3413

Counsel for Defendant

DLA PIPER LLP (US)

Rachel B. Cowen

Email: rachel.cowen@dlapiper.com

203 North LaSalle Street, Suite 1900

Chicago, Illinois 60601

Tel: (312) 368-7044

Fax: (312) 251-5844

Benjamin M. Gipson

Email: ben.gipson@dlapiper.com

2000 Avenue of the Stars

Los Angeles, California 90067

Tel: (310) 595-3000

Fax: (310) 595-3300

V. What is the proposed settlement?

Under the terms of the Settlement Agreement between Plaintiff and Shane Co. ("Settlement Agreement"), Shane Co. has agreed to pay \$650,000 to settle the claims asserted in this lawsuit. This amount includes: (i) the payments to members of the Settlement Classes who do not opt-out; (ii) payment of claims administration costs to administer the notice of this settlement to Class Members and administer the claims and payment process (which is expected not to exceed \$25,000); (iii) payment of an incentive award to the named Plaintiff Sarah Litt of up to \$7,500 for consideration of her service in prosecuting and settling the claims; (iv) payment of Class Counsel's attorneys' fees up to 30% or \$195,000; and (v) Class Counsel's actual litigation expenses, estimated to be approximately \$25,000. Following the Court-approved deductions for attorneys' fees, costs, expenses, and Plaintiff's incentive award, the remaining sum of at least \$397,500 (the "Net Settlement Amount") will be distributed to all members of the Classes who do not request to be excluded, automatically, without the need to submit a claim form.

The following is a summary of the settlement provisions. The specific and complete terms of the proposed settlement are stated in the Settlement Agreement, a copy of which is filed with the Clerk of the Court.

Shane Co. has agreed to pay all members of the Classes through the Claims Administrator in accordance with the terms of the Settlement Agreement, after final approval of the class action settlement. These "Settlement Shares" will be mailed within twenty-eight (28) days after the Court enters an order finally approving the settlement, provided there is no appeal of the Court's final approval of the settlement.

Calculation of Settlement Shares:

Of the total Net Settlement Fund, 85% will go to the California Settlement Class and 15% to the Non-California Settlement Class. The portion allocated to the California Settlement Class will be called the "California Net Settlement Fund," and the portion allocated to the Non-California Settlement Class will be called the "Non-California Net Settlement Fund."

Of the California Net Settlement Fund, 35% will be paid out equally to each participating California Settlement Class member whose employment with Shane Co. ended between June 17, 2011 and the date of Preliminary Approval, in exchange for their release of waiting time penalties. The remaining 65% of the California Net Settlement Fund will be paid out to each participating California Settlement Class member based on the number of weeks the participating California Settlement Class member worked for Shane Co. in California between June 17, 2010 and April 1, 2015.

The Non-California Net Settlement Fund will be paid out to each participating Non-California Settlement Class member, based on the number of weeks the participating Non-California Settlement Class member worked in for Shane Co. between June 17, 2011 and November 8, 2014.

Based on Shane Co.'s records of your dates of employment, your estimated settlement share is \$ [REDACTED]. You will receive this payment unless you affirmatively request exclusion from the settlement by completing and timely returning a Request for Exclusion form (enclosed with this notice) to CPT Group, Inc.

Release of Claims:

If you do not opt-out by completing the attached Request For Exclusion From Class ("Opt Out") Form, you will be releasing and discharging Shane Co. and all of its past and present parent companies, controlling persons, subsidiaries, affiliates, directors, officers, agents, attorneys, employees, and benefit plans sponsored by any such entities (collectively "Released Parties"), as follows:

- California Settlement Class members who do not opt-out will release all claims that are asserted or that could have been asserted in the Lawsuit, whether known or unknown, under federal law or California law arising out of Shane Co.'s alleged failure to: a) recalculate the regular rate of pay and retroactively adjust overtime premiums after paying incentive compensation; b) provide all legally required meal and rest periods; and c) pay all wages owed upon termination (hereinafter collectively referred to as the "California Released Claims"). For members of the California Settlement Class who do not opt out, the release period shall run from June 17, 2010 through 60 days after the Court preliminarily approves the Settlement. The release of "unknown" claims includes a waiver of the rights and benefits of California Civil Code § 1542, **ONLY** with respect to the claims asserted or which could have been asserted in the lawsuit. California Civil Code § 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

- Non-California Settlement Class members who do not opt-out will release all claims that are asserted or could have been asserted in the Lawsuit, whether known or unknown, arising under federal law, state law or common law based upon Shane Co.'s failure recalculate the regular rate of pay and retroactively adjust overtime premiums after paying incentive compensation. For members of the Non-California Settlement Class who do not opt out, the release period shall run from June 17, 2011 through November 22, 2014.

VI. What are my rights with regard to this matter?

If you fit the description of a Class Member as set forth in this Notice, you have three options. Each option has its own consequences, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, are as follows.

A. Option One. Do Nothing.

You do not need to take any action to qualify to receive money in this settlement. Assuming the settlement is finally approved, you should be sent a check for your share of the settlement approximately twenty-eight (28) days after final approval of the settlement is granted, assuming there are no objections to the settlement. You also will release claims against Shane Co. as described in Section V, above.

B. Option Two. You Can Exclude Yourself (“opt out”) from the Settlement.

If you do not wish to participate in or be bound by the settlement, you must mail to the Claims Administrator, CPT Group, Inc., at the address provided below, a written request to exclude yourself from the settlement (“Request for Exclusion”), post-marked on or before June 14, 2015. Failure to complete the required information in the Request for Exclusion and/or timely postmark the request will result in your Request for Exclusion being rejected and you will be treated as a class member.

If you request exclusion, you will not receive any money from the settlement, nor will you be considered to have released your claims alleged in the class action. You may, however, pursue other remedies separate and apart from this class action Settlement that may be available to you. You may consult an attorney of your own choosing at your own expense if you wish to pursue a claim individually and opt out of this class action Settlement.

C. Option Three. You May Object to the Settlement.

If you are a Class Member, and you ***do not exclude yourself*** (opt out) from the Settlement Class, you can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612, filing them in person at any location of the United States District Court for the Northern District of California, or by filing them with the Claims Administrator (who will then serve them on Class Counsel and Shane Co.’s counsel as well as file those objections collectively with the Court), and (c) be filed or postmarked on or before June 14, 2015.

VII. Who can I contact if I have further questions?

The court-appointed Administrator for this class action settlement is as follows:

Sarah Litt v. Western Stone & Metal Corp.

CPT Group, Inc.

[ADDRESS]

[TELEPHONE NUMBER]

If you have questions, you may call the Claims Administrator, toll free at [TELEPHONE NUMBER]. Ask about the *Litt v. Western Stone & Metal* class settlement. You may also call Class Counsel listed in Section V above. **PLEASE DO NOT CALL THE COURT OR COUNSEL FOR DEFENDANTS.**

VIII. Schedule of Future Deadlines and Events.

Event	Date
Defendant to provide class contact information to Claims Administrator	April 8, 2015
Claims Administrator to mail Class Notice to the Settlement Classes	April 15, 2015
Class Counsel to file Motion for Attorneys' Fees and Class Representative Incentive Payment	June 3, 2015
Objection/Exclusion Deadline	June 14, 2015
Plaintiff to file Motion for Final Settlement Approval	June 24, 2015
Final Approval Hearing	July 8, 2015